



Appeal Decision

Site visit made on 28 February 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 APRIL 2023

Appeal Ref: APP/G5180/W/22/3300007

School Bank Farm, Hookwood Road, Orpington, Bromley BR6 7NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Anthony Herron against London Borough of Bromley.
 - The application Ref DC/17/00079/RECON is dated 2 March 2022.
 - The application sought planning permission for the conversion of attached barn (Building E) for use as an extension to the existing residential dwelling (Building D), and change of use of land surrounding Building D from agricultural to residential use to provide a private garden without complying with a condition attached to planning permission Ref DC/17/00079/FULL1, dated 11 May 2017.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no buildings, structures, alterations, walls or fences of any kind shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
 - The reasons given for the condition is: In order to comply with Policies H7 and BE1 of the Unitary Development Plan and to prevent overdevelopment of the site.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of attached barn (Building E) for use as an extension to the existing residential dwelling (Building D), and change of use of land surrounding Building D from agricultural to residential use to provide a private garden at School Bank Farm Hookwood Road, Orpington, Bromley BR6 7NX in accordance with the application Ref DC/17/00079/RECON dated 2 March 2022, without compliance with condition number 4 previously imposed on planning permission Ref DC/17/00079/FULL1 dated 1 May 2017 and subject to the conditions contained in the schedule to this decision.

Preliminary Matters and Main Issue

2. Following the submission of the appeal against non-determination the Council has clarified the position it would have taken if it had had the opportunity to determine the application. The reason, from the original planning permission, given for the condition being imposed was to prevent overdevelopment of the site. However, the Council now contest the appeal on the grounds that the removal of the condition would be likely to result in development that would impact detrimentally on the openness and visual amenities of the Green Belt

and the open and rural character of the area, including its landscape value. The Appellant has seen these details and has had the opportunity to respond.

3. The main issue is the effect that removing condition 4 would have on the openness and visual amenity of the Green Belt and the rural character of the area.

Reasons

4. The appeal site is occupied by a detached house (referenced Buildings D and E) and various outbuildings within its curtilage. It is located within the Green Belt and is in a rural location south of the residential settlement of Pratts Bottom. The appellant is seeking to remove condition 4 from the original permission, which restricts permitted development rights.
5. Schedule 2, Part 1 of the (General Permitted Development) Order (GPDO) sets out the permitted development (PD) rights for development within the curtilage of a dwellinghouse. These rights apply generally to all dwellinghouses, with specific exceptions for some classes. Rights under Class A, for example, do not apply on Article 2(3) land. This is defined in the GPDO as, inter alia, land within a conservation area, an area of outstanding natural beauty, a National Park, and a World Heritage Site. However, Article 2(3) land does not include land falling within the Green Belt.
6. Given the specific areas of land included under Article 2(3), it can be surmised that the omission of land within the Green Belt from the list was intentional on the Government's part, and as a result, land within the Green Belt is regarded as no different in terms of the application of PD rights as land outside of it.
7. Furthermore, paragraph 56 of the National Planning Policy Framework (2021) (the Framework) states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Additionally, paragraph 54 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so, and Planning Practice Guidance (PPG) also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
8. Whilst I recognise the detailed planning history at the site and that the Council has recently allowed an increase to the size of the residential curtilage, the starting point is that PD rights should remain in place, even in the Green Belt, unless clear justification is advanced which is specific to the site. The fact that the appeal site is located within the Green Belt and there may be a potential for further extensions and outbuildings, is a situation that would be equally applicable to a significant proportion of other dwellings and residential curtilages across the Green Belt and would not, on this basis, represent an exceptional circumstance. Similarly, the fact that the property has been extended previously, through the conversion of an attached barn, would not be unusual or unexpected.
9. It is noted that the original barn did benefit from residential PD rights. Nonetheless, this is not a clear justification for the imposition of this condition. It is not considered that the condition would therefore be in accordance with paragraph 54 of the Framework.

10. The Council refer to Policy 51 of the London Borough of Bromley Local Plan (2019) (BLP) which identifies that extensions to converted or replacement dwellings will not normally be permitted. However, this policy relates to situations where planning permission is sought, and does not itself justify the blanket removal of PD rights from domestic buildings.
11. The Council has drawn to my attention various linked appeal decisions¹ in which the Inspectors' considerations relate to conditions which restricted PD rights at the appeal properties. However, in one of these instances, previous Inspectors had indicated that no further extensions to the property would be acceptable. In the other instance, the Inspector makes clear that the circumstances in that particular case were materially different to most other houses in the Green Belt that retain their PD rights. In this case, the Council has not demonstrated that the appeal property is different to most other houses in the Green Belt, and therefore should not retain PD rights.
12. Despite the Council's focus on the impact on the Green Belt, the reason given on the decision notice for imposing the condition actually refers to the prevention of overdevelopment of the site. The Council advances further arguments that the removal of the condition could result in development which is harmful to the attractive open and rural character of the area, which is of a high landscape value, as well as encroachment of development in the countryside. However, the now established domestic character of the site means outbuildings, limited extensions to the dwelling and areas of hardstanding would not be unexpected sights. I am mindful that PD rights are limited to the curtilage of the dwellinghouse, and are subject to restrictions in terms of size and location which would still provide a level of protection that would prevent uncontrolled development beyond the extent of the dwellinghouse. I am not persuaded that the site circumstances are such, that extensions to the dwelling would have such an effect on the openness of the Green Belt or its purposes that removal of PD rights is justified.
13. The Council has not given any specific examples of potential extensions which it considers could be undertaken which would be harmful to the openness of the Green Belt or rural character of the area. Whilst the property may be visible in some views from the south and east, other than being located within the Green Belt, there is nothing to suggest that the site lies in an area that has a special character. It seems to me, that the remote position of the site means that any extension would have limited effect on the overall character of the surrounding area. Given these factors, I am not persuaded that the site circumstances are so exceptional or unique in nature that the removal of PD rights for development under the various Classes of the GPDO are justified.
14. The Council reference an appeal decision² which they suggest highlights the need to consider the restriction of PD rights on a case-by-case basis. Whilst I agree that the removal of PD rights should be considered on a case-by-case basis, for the reasons set out in this appeal, I do not find that there is clear justification for their removal in this instance.

¹ APP/G5180/C/21/3270920, APP/G5180/W/20/3262673 and APP/G5180/X/20/3255199; and APP/G5180/X/21/3283296, APP/G5180/D/22/3291586, APP/G5180/D/22/3295837 and APP/G5180/W/22/3293877

² APP/G5180/W/15/3137709

15. For the above reasons, it has not been shown that there is 'clear justification' for the removal of PD rights as set out in the Framework. Consequently, for the reasons set out, and with reference to paragraphs 54 and 56 of the Framework and being mindful of the PPG, I find the condition to be neither reasonable nor necessary to make the development acceptable in the context of the site's location within the Green Belt.
16. Subsequently, I conclude that condition 4 is unnecessary and unreasonable in this particular instance as it is not required to protect the openness and visual amenity of the Green Belt and the rural character of the area. Its removal would not conflict with Policies 49 and 51 of the BLP. These policies seek to ensure the protection of the Green Belt. Nor would the removal of the condition conflict with Policies 37 and 77 of the BLP which seek a high standard of design for all development, including extensions to existing buildings, and seek to safeguard the quality and character of the local landscape.

Other Matters

17. Interested parties suggest that the appellant agreed to the condition when the original planning permission was granted, and the condition must therefore be adhered to. Whilst I have taken into account the comments regarding the importance of the disputed condition, I have not found that exceptional circumstances exist in this case that justify the removal of permitted development rights as set out in the disputed condition.

Conditions

18. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
19. The original planning permission (DC/17/00079/FULL1) has planning conditions which control the implementation of a landscaping scheme and boundary enclosures. These conditions remain relevant and I shall impose the conditions on the new decision notice. This would also prevent the use of PD rights to replace the boundary enclosures which are controlled by the planning condition.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The landscaping scheme as shown on the submitted drawings shall be implemented in the first planting season following the first occupation of the

buildings or the substantial completion of the development whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species to those originally planted.

- 2) The boundary enclosures indicated on the approved drawings shall be completed before any part of the development hereby permitted is first occupied and shall be permanently retained thereafter.
- 3) The additional accommodation shall be used only by members of the household occupying the dwelling and shall not be severed to form a separate self-contained unit.
- 4) The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.

END OF SCHEDULE